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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 FINNMARK DESIGNS LLC, a Nevada) **Case No. 2:23-cv-00018-JCM-VCF**
limited liability company,)
9 Plaintiff,)
10 v.)
11 ROBYN OPENSHAW, an individual;)
GREENSMOOTHIEGIRL.COM, INC., a)
Utah Corporation, d/b/a INFL)
PRODUCTS;)
GREENSMOOTHIEGIRL.COM INC., a)
Florida Corporation,)
15 Defendants.)
16)
17)
18)
19)
20)

**PLAINTIFF FINNMARK DESIGNS,
LLC'S SUPPLEMENTAL COMPLAINT
UNDER FED. R. CIV. P. 15(D)**

JURY DEMAND

Plaintiff FINNMARK DESIGNS, LLC ("Plaintiff" or "Finnmark"), by and through its attorney of record, brings this Supplemental Complaint against Defendants ROBYN OPENSHAW, an individual; GREENSMOOTHIEGIRL.COM, INC., a Utah corporation, d/b/a INFL PRODUCTS; and GREENSMOOTHIEGIRL.COM INC., a Florida corporation (together, "Defendants"), and hereby alleges as follows:

PRELIMINARY STATEMENT

1. Finnmark initiated this action on December 1, 2022, in the Eighth Judicial District Court of Clark County, Nevada, for Breach of Contract, Breach of Implied Covenant of Good Faith and Fair Dealing, Alter Ego, Fraud in the Inducement, and Equitable and Injunctive Relief ("Original Complaint"). On January 5, 2023, the action was removed to the United States District Court for the District of Nevada. (ECF No. 1.)

2. Finnmark files this Supplemental Complaint based on new facts which have arisen since the filing of the Original Complaint on December 1, 2022. Specifically, Defendants have

1 made inaccurate, disparaging, and defamatory comments regarding Finnmark since the filing of
2 the Original Complaint, giving rise to an additional cause of action against Defendants for trade
3 libel.

4 **PARTIES**

5 3. Plaintiff FINNMARK DESIGNS, LLC is, and at all relevant times was, a Nevada
6 limited liability company authorized to and doing business in this Judicial District.

7 4. Defendant ROBYN OPENSHAW (“Openshaw”) is an individual formerly residing
8 in the state of Utah and currently residing in St. Johns County, Florida.

9 5. Defendant GREENSMOOTHIEGIRL.COM, INC (“GSG-UT”) is, and at all
10 relevant times was, a Utah corporation.

11 6. Defendant GREENSMOOTHIEGIRL.COM, INC (“GSG-FL”) is, and at all
12 relevant times was, a Florida corporation.

13 7. Upon information and belief, GSG-FL was formed in December 2021 and is the
14 successor-in-interest to GSG-UT with respect to the contract matters at issue in this case.

15 8. Upon information and belief, Defendant GSG-UT is directly or indirectly wholly
16 or principally owned and controlled by Defendant Openshaw and as such is Defendant
17 Openshaw’s alter ego.

18 9. Upon information and belief, Defendant GSG-FL is directly or indirectly wholly or
19 principally owned and controlled by Defendant Openshaw and as such is Defendant Openshaw’s
20 alter ego.

21 10. Upon information and belief, at all relevant times hereto, Defendant Openshaw was
22 an owner, shareholder, director, officer, principal, partner and/or manager of Defendant GSG-UT
23 and personally directed, controlled, ratified, participated in, authorized and/or directly benefited
24 from the actions described herein.

25 11. Upon information and belief, at all relevant times hereto, Defendant Openshaw was
26 an owner, shareholder, director, officer, principal, partner and/or manager of Defendant GSG-FL
27 and personally directed, controlled, ratified, participated in, authorized and/or directly benefited
28 from the actions described herein.

1 12. Unless otherwise specifically stated, any references to Openshaw or Defendant
2 Openshaw herein shall refer to Defendant Openshaw both in her individual capacity as well as in
3 her capacity as an owner, shareholder, director, officer, principal, partner and/or manager of
4 Defendant GSG-UT.

5 13. Unless otherwise specifically stated, any references to Openshaw or Defendant
6 Openshaw herein shall refer to Defendant Openshaw both in her individual capacity as well as in
7 her capacity as an owner, shareholder, director, officer, principal, partner and/or manager of
8 Defendant GSG-FL.

9 14. At all relevant times hereto, each Defendant was the agent, servant, employee,
10 representative, alter-ego, and/or co-conspirator of each of the other Defendants, and was at all
11 times acting within the scope of such agency, affiliation, employment, alter-ego relationship and/or
12 conspiracy with the knowledge, consent, ratification, authorization, and/or at the direction of each
13 Defendant, or is otherwise responsible in some manner for the occurrences in this Complaint.

JURISDICTION AND VENUE

15 15. This district court has jurisdiction over this matter based on diversity of citizenship
16 pursuant to 28 U.S.C. §§ 1441 and 1332(a).

16. This Court has personal jurisdiction over the Defendants because they have
17 purposefully availed themselves of the protection of the laws of the State of Nevada and have
18 affirmatively directed contact towards the State of Nevada as a result of the contractual agreements
19 entered into with Plaintiff from which this dispute arises. Additionally, Defendants, though the
20 acts complained of herein, have directed unlawful actions towards and thereby knowingly and
21 intentionally causing (and/or intending to cause) harm and injury to a resident of this Judicial
22 District

17. Venue is proper because a substantial part of the events giving rise to contracts at
issue and defamation claims relating thereto occurred in this judicial district.

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SUPPLEMENTAL FACTUAL ALLEGATIONS

15 21. On October 11, 2022, Defendants sent an email to Finnmark which accused
16 Finnmark of “stealing commissions” from Defendants without providing any evidence or factual
17 data regarding which customers Defendants claimed had purchased saunas where Defendants were
18 owed commissions. Defendants demanded immediate payment from Finnmark of such
19 commissions, along with several other unjustified demands without basis in the Marketing
20 Agreement.

25 23. On October 12, 2022, Defendants sent an email back to Finnmark making more
26 egregious claims while conspicuously refusing to provide any specific customer information which
27 would allow Finnmark to investigate Defendants' allegations.

28 24. On October 12, 2022, Finnmark emailed Defendants again requesting Defendants

1 produce the customer information so that such information could be reviewed and, in the event
2 there was a substantiated instance of crossover where a commission payment was due, then such
3 payment to Defendants could be arranged.

4 25. Finnmark informed Defendants that there were over 2,000 sales during the relevant
5 period at issue and that there might naturally be some crossover as is typical with any sales
6 organization. Indeed, Defendants were well aware of instances of crossover occurring during the
7 term of the Marketing Agreement, including times when customers contacted Finnmark initially
8 on their own and then later contacted Finnmark through one of Defendants' marketing campaigns
9 – and where Defendants would later claim such sale type as one to which Defendants were owed
10 a commission even though such customers had contacted Finnmark first and thus Defendants were
11 not owed any commissions under the Marketing Agreement.

12 26. Moreover, potential instances of crossover were exacerbated by Defendants' own
13 actions, specifically Defendants' deliberate refusal beginning in 2020 to provide Finnmark with
14 Defendants' opt-in list of customers so that Finnmark would know which customers that might be
15 contacting Finnmark were ones that came from Defendants' marketing efforts as well as know
16 which customers had actually already contacted Finnmark before contacting Finnmark again
17 through Defendants' campaigns.

18 27. As such, any inaccurate reporting that may have arisen during the course of the
19 Marketing Agreement can be directly attributed in significant part to Defendants' own actions
20 which prevented Finnmark from being able to cross reference customers for accurate reporting and
21 not because of any intentional action on the part of Finnmark to misappropriate sales that otherwise
22 were attributable to Defendants or one of Defendants' sub-influencers.

Defendant's Libelous Statements

24 28. On information and belief, after the Original Complaint was filed, Defendant
25 Openshaw began sending out emails to numerous sub-influencers who had promoted for
26 Finnmark's saunas previously and making false and defamatory statements about Finnmark and
27 its officer, Garett Gordon, having "stolen" money owed to them and having engaged in illegal
28 conduct.

1 29. In particular, on information and belief, Defendant Openshaw sent an email to a
2 third-party sub-influencer named Erin Elizabeth and made multiple false, disparaging and
3 defamatory statements regarding Finnmark and its officer, Garrett Gordon, including (without
4 limitation): that Finnmark owed Openshaw and Ms. Elizabeth money; that Openshaw had
5 “discovered” and “proven” that 86 sauna sales had been “stolen” by Finnmark from “26 different
6 influencers”; that Finnmark obtained sales leads “illegally”; and that Finnmark had acted in
7 violation of its contract through such actions. A copy of the email sent out by Openshaw reflecting
8 these false, disparaging and defamatory statements is attached hereto as **Exhibit 1**.

9 30. As detailed herein, Openshaw's statements are demonstrably false, disparaging,
10 and defamatory.

31. Upon information and belief, Defendant Openshaw has sent out a similar
32 defamatory and disparaging email to at least 25 other sub-influencers.

Defendants' False Statements About 86 Stolen Sales

32. Defendants false, disparaging and libelous statements center around a supposed sauna sales that Defendants assert have been “proven” that Finnmark “stole” from Defendants and sub-influencers.

17 33. Given that the total number of relevant sales during the course of the Marketing
18 Agreement was in excess of 2,000 sales, Defendants' accusations over 86 "stolen" saunas amounts
19 to a paltry 4% of the total sales.

34. Finnmark has conducted an extensive review of each of the 86 sauna sales that
Defendants allege Finnmark “stole” – and the results of such analysis demonstrate the clear falsity
of Defendants’ statements. The following table provides a summary of such sauna sales and their
source:

22 Sales	Confirmed Finnmark Sales by phone recordings/lead inquiries
17 Sales	Finnmark Facebook / website / lead inquiries / dealer referrals / Trade Shows / prior database
4 Sales	Sales not under the Contract
3 Sales	Refunded or Cancelled Orders
9 Sales	Canada/Alaska sales
31 Sales	Cruzez Inc. prior sales database

1 35. For 22 of the 86 sales, Finnmark has voice recordings and/or lead inquiries that
2 demonstrate the customer never mentioned any influencer and/or was contacting Finnmark
3 directly, and thus Defendants are not entitled to claim these sales as belonging to them in any way,
4 and certainly cannot claim that such sales were “stolen” by Finnmark or that Finnmark engaged in
5 “illegal” activity relative to such sales. *See Exhibit 2* attached hereto.

6 36. For 17 of the 86 sales, such customers resulted from Finnmark’s own marketing
7 activities, including its website, Facebook, lead inquiries, dealer referrals, trade shows, or
8 Finnmark’s own prior customer database. Defendants are not entitled to claim such sales as
9 belonging to them in any way, and certainly cannot claim that such sales were “stolen” by
10 Finnmark or that Finnmark engaged in “illegal” activity relative to such sales.

11 37. For 4 of the 86 sales, the specific sauna sold to the customer was not one of the
12 three specifically named Influence Saunas that fell within the scope of the Marketing Agreement
13 giving rise to a commission owed to Defendants. Thus, Defendants are not entitled to claim these
14 sales as belonging to them in any way, and certainly cannot claim that such sales were “stolen” by
15 Finnmark or that Finnmark engaged in “illegal” activity relative to such sales. *See Exhibit 3*
16 attached hereto.

17 38. For 3 of the 86 sales, the customer later cancelled the sauna order. *See Exhibit 4*
18 attached hereto. Defendants are not entitled to a commission for a cancelled order and certainly
19 cannot claim that such cancelled orders reflect sales that were “stolen” by Finnmark or that
20 Finnmark engaged in “illegal” activity relative to such sales.

21 39. For 9 of the 86 sales, the orders came from Canada or Alaska customers. *See*
22 **Exhibit 5** attached hereto.

23 40. The InfluenceSauna.com website was unable to process such orders, despite
24 Finnmark’s request to Defendants’ representatives on multiple occasions to update the website to
25 allow orders from Canada or Alaska customers to be processed. Because of Defendants’ own
26 inability to process such orders as Influence Sauna orders, such orders would not have been
27 entered into the CRM database used by Defendants to track sales attributable to Defendants’
28 marketing efforts.

1 41. These orders were processed manually by Finnmark and, without any information
2 from Defendants regarding such customers belonging to Defendants (once again because
3 Defendants deliberately chose not to share its customer information to Finnmark to prevent any
4 crossover), were not attributed to Defendants' marketing efforts.

5 42. Notably, relative to these nine orders, three of them came in November 2020 and
6 the remaining six came in from January to May 2021. Defendants' representatives had full and
7 complete access to Finnmark's sauna sales records during the entire period the Marketing
8 Agreement was in effect in order to calculate commissions owed to Defendants – and yet
9 Defendants never brought any of these nine sales to the attention of Finnmark until October 2022
10 (over a year after the last sale).

11 43. Given the amount of time that passed before Defendants ever mentioned such sales,
12 they clearly were not ones that Defendants believed were sales for which they were entitled to a
13 commission; rather, Defendants only brought up such sales when Defendants required a pretext in
14 order to claim that Finnmark had somehow breached the Marketing Agreement so that Defendants
15 could then justify their own willful breach of the Marketing Agreement.

16 44. Regardless, to the extent that Defendants might be entitled to claim these nine sales
17 as belonging to them for commission purposes, the circumstances surrounding such orders
18 certainly do not give rise to a legitimate claim that such sales were "stolen" by Finnmark or that
19 Finnmark engaged in "illegal" activity relative to such sales.

20 21. Cruzez Inc. (the contracted sales company used by Finnmark) had its own database
21 of customers from the 2014-2018 timeframe (before the Marketing Agreement), which was used
22 for marketing and cross-reference of Influence Sauna leads. For 31 of the 86 sales, the sauna sales
23 were from customers that were already included in Cruzez Inc.'s customer database, and thus they
24 were not sauna sales for which Defendants were entitled to claim as belonging to them in any way,
25 and certainly cannot claim that such sales were "stolen" by Finnmark or that Finnmark engaged in
26 "illegal" activity relative to such sales.

27 22. Finnmark, in conducting the aforementioned detailed review of its sales records,
28 also discovered at least 37 sauna sales that were mistakenly credited to Defendants for which

Defendants were actually not entitled to receive any commission for such sales. Such overpayments should be refunded to Finnmark or credited against amounts, if any, otherwise determined by the Court to be owed by Finnmark.

4 23. In short, Finnmark never stole any sauna sales and thus Defendants' statements that
5 Finnmark did "steal" such sauna sales, that such "stolen" sauna sales were "proven," that Finnmark
6 engaged in "illegal" activity, and that Finnmark violated the Marketing Agreement through such
7 actions are demonstrably false, disparaging and defamatory.

SUPPLEMENTAL CAUSES OF ACTION

SIXTH CAUSE OF ACTION¹

(Trade Libel)

24. Plaintiff hereby repeats, realleges, and incorporates by reference the allegations of each of the preceding paragraphs of this Complaint as though fully set forth herein.

25. Defendants have made numerous false and defamatory statements of fact about Finnmark's business to third persons.

26. Specifically, Defendants' statements to third parties that Finnmark "stole" sauna sales and that it had been "proven" that Finnmark stole sales are demonstrably false, disparaging, and defamatory statements of fact about Finnmark's business.

27. Defendants knew or should have known that each of these statements were false, disparaging, and defamatory when made, and that Defendants lacked any privilege or justification for making the statements.

28. These statements were and are false and defamatory, and constitute defamation per se, because the statements have a clear tendency to injure Finnmark's business reputation and deter third parties from dealing with Finnmark based on the false impression that Finnmark "stole" sauna sales and otherwise engaged in "illegal" activity.

¹ Plaintiff's Original Complaint set forth five causes of action. This Supplemental Complaint recites one additional cause of action. In order to avoid any overlap and keep the causes of action in sequential order, Plaintiff's cause of action in this Supplemental Complaint will be labeled as Plaintiff's Sixth Cause of Action.

29. Furthermore, Defendants made these false statements with malice as the Defendants knew that the statements were false when made and/or had reason to doubt their truthfulness.

30. Defendants' intent in making these false, disparaging, and defamatory statements was to economically damage Finnmark's business. Thus, Finnmark is entitled to an award of exemplary or punitive damages against Defendants for their willful and malicious conduct in an amount to be proven at trial which is appropriate to punish or set an example of Defendants and to deter such conduct in the future.

31. As a direct and proximate result of the wrongful conduct of the Defendants as alleged herein, Finnmark has suffered, and continues to suffer, damages in an amount to be proven at trial. Such damages include, but are not limited to, special damages from a significant decrease in sales of the saunas which had been marketed by Defendants prior to Defendants' material breach of the Marketing Agreement, special damages in the nature of expenses for repairing the damage to Finnmark's reputation caused by Defendants' defamatory statements, and special damages in the nature of incurred legal costs and attorney's fees in bringing this action.

32. Plaintiff has been required to retain the services of an attorney to prosecute this action and is therefore entitled to an award of reasonable costs and attorney's fees incurred herein.

SUPPLEMENTAL PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests and prays that this Court enter a Judgment and Order in favor of Plaintiff and against Defendants on the supplemental causes of action brought in this Supplemental Complaint as follows:

A. That the Court enter judgment in favor of Plaintiff and against the Defendants, joint and severally, on all claims for relief alleged herein;

B. That Plaintiff be awarded compensatory, special, exemplary, and/or punitive damages pursuant to any applicable law in an amount to be determined at trial;

C. That Plaintiff be awarded reasonable costs and attorneys' fees incurred by Plaintiff in prosecuting this action pursuant to any applicable law;

1 D. That Plaintiff be awarded prejudgment and post-judgment interest at the maximum
2 rate allowed by law; and

3 E. That Plaintiff be awarded all other and further relief to which Plaintiff are entitled
4 and such other and further relief as this Court may deem just.

5
6 **JURY TRIAL DEMANDED**

7 Under Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by
8 jury on all issues raised so triable.

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10 Dated: January 31, 2023

11 Respectfully Submitted,

12 **GILE LAW GROUP, LTD.**

13 /s/ Ryan Gile
14 Ryan Gile, Esq.
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17 *Attorney for Plaintiff Finnmark Designs, LLC*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on January 31, 2023, I electronically filed the foregoing document
3 with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the
4 foregoing document is being served via transmission of Notices of Electronic Filing generated by
5 CM/ECF to all participants in the case who are registered CM/ECF users.

6
7 */s/ Ryan Gile*
8 Employee, Gile Law Group Ltd.
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